

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
INSITUFORM TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 04-10487 GAO
)	
AMERICAN HOME ASSURANCE)	
COMPANY,)	
)	
Defendant.)	
_____)	

AFFIDAVIT OF KURT M. MULLEN

I, Kurt M. Mullen, depose and state as follows:

1. I am a member in good standing of the bar of the Commonwealth of Massachusetts and of the bar of this Court. I am an associate at Nixon Peabody LLP (“Nixon Peabody”), which represents Defendant American Home Assurance Company (“American Home”), in the above-captioned matter. I submit this affidavit in support of American Home’s Motion for Summary Judgment and in opposition to Plaintiff’s Cross-Motion for Summary Judgment. The purpose of this affidavit is to introduce certain exhibits upon which American Home relies in its motion and which are cited in American Home’s Response to Insituform’s Local Rule 56.1 Response to American Home’s Statement of Undisputed Facts and Insituform’s Additional Undisputed Material Facts. The documents attached as exhibits either were produced in discovery in this matter by plaintiff Insituform Technologies, Inc. (“Insituform”)¹ or

¹ Documents with the prefix ITI-AIG were produced by Insituform in connection with this litigation.

D’Alessandro Corp. (“D’Alessandro”),² or were produced by the Massachusetts Water Resources Authority (“MWRA”) in response to American Home’s public records request. The documents produced by MWRA were reviewed by me and a paralegal at Nixon Peabody working under my supervision at the MWRA’s facility in Chelsea, Massachusetts.

2. Attached as Exhibit A is a true and accurate copy of Section 02713, Cured-In-Place Pipe Lining (ITI-AIG 009271-9286), part of the MWRA’s “Specification for East Boston Branch Sewer Rehabilitation (MWRA Contract No. 6840),” (ITI-AIG 008696-9329), as produced by Insituform.

3. Attached as Exhibit B is a true and accurate copy of a letter (ITI-AIG 005602) dated May 15, 2003 from Thomas Porzio, P.E. of Insituform to Jon D’Alessandro of D’Alessandro Corp. (“D’Alessandro”), as produced by Insituform.

4. Attached as Exhibit C is a true and accurate copy of an e-mail (ITI-AIG 005598) dated May 14, 2003 from Alan P. Hoddeson of Jacobs Civil Inc. (“Jacobs”) to Mr. D’Alessandro, apparently forwarded by Mr. D’Alessandro to Mr. Porzio, as produced by Insituform.

5. Attached as Exhibit D is a true and accurate copy of a letter (ITI-AIG 003470) dated August 22, 2003 from Mr. Porzio to Mr. D’Alessandro, attaching a letter (ITI-AIG 003471-3476) dated August 22, 2003 from Rick Baxter, P.E. of Insituform to Mr. Porzio, as produced by Insituform.

6. Attached as Exhibit E is a true and accurate copy of a letter (D 07522-7527) dated October 31, 2003 from Paul V. Savard, P.E. of Jacobs to Mr. D’Alessandro, as produced by D’Alessandro.

² Documents with the prefix D were produced by D’Alessandro Corp. (“D’Alessandro”) in response to a subpoena directed to D’Alessandro’s Keeper of the Records.

7. Attached as Exhibit F is a true and accurate copy of a letter dated July 17, 2003 from Mr. D'Allessandro to Mr. Hoddeson at Jacobs, forwarding a letter dated July 16, 2003 from Mr. Porzio to Mr. D'Allessandro, as produced by MWRA.

8. Attached as Exhibit G is a true and accurate copy of a memorandum dated July 18, 2003 from Mr. Hoddeson to Mr. D'Allessandro in response to Mr. D'Allessandro's July 17, 2003 letter, as produced by MWRA.

9. Attached as Exhibit H is a true and accurate copy of a memorandum (ITI-AIG 003517) dated October 14, 2003 from Mr. Baxter to various individuals at Jacobs, MWRA and Insituform, as produced by Insituform.

10. Attached as Exhibit I is a true and accurate copy of a letter (ITI-AIG 012227-12228) dated January 13, 2004 from Thomas S. Rooney, Jr., Insituform's President and CEO, to Michael J. Hornbrook, Chief Operating Officer of the MWRA, as produced by Insituform.

11. Attached as Exhibit J is a true and accurate copy of a retention agreement (ITI-AIG 012862-12869) dated December 9, 2003, entered into between Haley & Aldrich, Inc. and Insituform, as produced by Insituform.

12. Attached as Exhibit K is a true and accurate copy of a letter (ITI-AIG 005609-5611) dated June 2, 2003 from Brian C. Dorwart, P.E. of Shannon & Wilson, Inc. to Mr. Porzio, with attachments (ITI-AIG 005612-5619), as produced by Insituform.

13. Attached as Exhibit L is a true and accurate copy of a letter (ITI-AIG 011777) dated May 20, 2005 from Mr. Porzio to Mr. D'Allessandro, as produced by Insituform.

14. Attached as Exhibit M is a true and accurate copy of a letter (ITI-AIG 010052) dated May 24, 2005 from Paul V. Sevard of Jacobs to Mr. D'Allessandro in response to Mr. Porzio's May 20, 2005 letter, as produced by Insituform.

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I declare under the penalty of perjury that the foregoing is true and correct. Executed this
21st day of September, 2006.

A handwritten signature in dark ink, appearing to read "K. Mullen", is written above a horizontal line.

Kurt M. Mullen